No. 351.

Motion to advance.

Office Supreme Court U.S.
FILED
OCT 19 1901
JAMES H. McKENNEY,
Clerk.

Filed Oct. 19, 1901.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1901.

ALEXANDER E. ORR, *et al.*, as Executors and Trustees of DAVID DOWS, Sr, deceased, RICHARD M. HOE, *et al.*, as Executors of DAVID DOWS, Jr., deceased, and TRACY DOWS, *et al.*, as Guardians of DAVID DOWS, 3rd, *et al.*, Infants,

Plaintiffs in Error, } No 351.

against

THEODORE P. GILMAN, as Comptroller of the State of New York, and BIRD S. COLER, as Comptroller of the City of New York,

Defendants in Error.

MOTION TO ADVANCE.

And now come the plaintiffs in error and the defendants in error, and jointly move this Honorable Court to advance this cause upon the docket and hear it at as early a day as the convenience of the Court will permit. The reasons for this motion and application are as follows :—

This cause involves questions of great public importance. Their prompt and authoritative decision is important to the State of New York as well as to the plaintiffs in error. The questions arise under the execution of the law of New York relating to Taxable Transfers (Article X. of the Tax Law of the State). The Surrogate's Court of the County of New York,

whose order and decree is now brought up for review, is virtually the assessing officer or authority of the State for the purpose of fixing taxes under its law relating to taxable transfers.

One of the questions presented on this writ of error relates to the constitutionality and validity of the following provision added to the law of the State of New York, relating to taxable transfers in 1897 :—

> "5. Whenever any person or corporation shall "exercise a power of appointment derived from "any disposition of property made either before "or after the passage of this act, such appoint- "ment when made shall be deemed a transfer tax- "able under the provisions of this act in the same "manner as though the property to which such "appointment relates belonged absolutely to the "donee of such power and had been bequeathed or "devised by such donee by will; and whenever "any person or corporation possessing such a "power of appointment so derived shall omit or "fail to exercise the same within the time pro- "vided therefor, in whole or in part, a transfer "taxable under the provisions of this act shall be "deemed to take place, to the extent of such "omissions or failure, in the same manner as "though the persons or corporations thereby be- "coming entitled to the possession or enjoyment "of the property to which such power related had "succeeded thereto by a will of the donee of "the power failing to exercise such power, "taking effect at the time of such omission or "failure."

The Court of the State of New York of highest jurisdiction holds that this new provision which subjects any property to which a power of appointment relates to a tax under the Transfer Tax Law as though the donee of the power were absolute owner of the property, is valid and constitutional, even though, as the plaintiffs in error contend, title to the property had vested under the Will of the donor of the power long prior to the enactment of this new provision.

Another of the questions presented by this writ of error is, as plaintiffs in error contend, that though the tax imposed by this new provision is clearly a tax

upon property, said statute as interpreted by the Court of highest jurisdiction of the State of New York, deprives the owners of property as to which a power of appointment relates, of the general exemptions of the Property Tax Law of the State of New York, and of the protection of Section I. of the Fourteenth Amendment to the Constitution of the United States, and Section X. of Article One thereof.

Another of the questions presented by this writ of error is the validity of the provisions of the Transfer Tax Law of the State of New York, which the Court of highest jurisdiction of that State holds impose a tax presently payable upon remainders the title to which has vested, but of which the remaindermen have neither enjoyment nor possession.

These questions have never been presented in any other Court in the United States, and until they are determined by this Court they are a necessary and constant source of embarrassment to the owners of property and to the officials having to do with the execution of the tax laws. Property to the amount of millions of dollars are affected in the State of New York.

Under these circumstances counsel respectfully suggest that it is essential that these unusually important constitutional questions should be determined in all their aspects as speedily as may be.

Respectfully submitted,

HORACE E. DEMING,
Counsel for Plaintiffs in Error.

JABISH HOLMES, JR.,
Counsel for Defendants in Error.

Counsel for the defendants in error expects in another legal proceeding in New York to be required to attend abroad in December. It is, therefore, respectfully suggested that if the motion be granted and it accords with the convenience of the court, that the cause be assigned for a day in the last week in November. If the suggestion does not accord with the court's convenience, counsel request that the cause be added at the foot of the causes now already advanced and assigned for October 28.